

### **REMARKS**

The pending Office Action addresses and rejects pending claims 48-68. Applicants cancel withdrawn claims 1-47 and 69-159. Applicants reserve the right to pursue these claims in a divisional application. Applicants respectfully request reconsideration in view of the amendments and remarks made herein.

#### ***Claim Amendments***

Independent claim 1 is amended to recite a method that includes piercing stomach tissue from within the stomach with piercing member, repositioning the pierced stomach tissue, and engaging the pierced stomach tissue. Support for this amendment can be found throughout the specification and in the drawings, for example in paragraphs [0083]-[0085].

Independent claim 53 is amended to recite a method of treatment that includes piercing stomach tissue with a piercing member from within the stomach and engaging the pierced stomach tissue with a plurality of members. Support for this amendment can be found throughout the specification and in the drawings, for example in paragraphs [0083]-[0085].

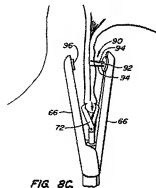
Independent claim 61 is amended to recite a method of treatment that includes piercing the stomach with a piercing member from within the stomach, engaging the pierced stomach tissue with at least one of a plurality of members, and fixing the exterior surface regions of the stomach to each other. Support for this amendment can be found throughout the specification and in the drawings, for example in paragraphs [0083]-[0085], as well as in dependent claim 63 which is canceled. No new matter is added.

#### ***Claim Rejections Pursuant to 35 U.S.C. §102***

Claims 48-68 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,403,326 of Harrison et al. ("Harrison"). Applicants respectfully disagree.

Claim 48

Independent claim 48 recites a method that includes piercing stomach tissue from within the stomach with a piercing member, repositioning the pierced stomach tissue, engaging the pierced stomach tissue with pair of coacting jaws, and piercing the stomach tissue with at least one of the jaws. Harrison is directed to the treatment of esophageal reflux and teaches a method in which tissue is grabbed by a grasper (72) and stapled by movable jaws (66), as shown in FIG. 8C of Harrison which is reproduced herein. Harrison does not teach or suggest a method that includes *piercing* stomach tissue, repositioning the *pierced* stomach tissue, and engaging and piercing the stomach tissue with coacting jaws. Harrison only teaches grabbing the tissue with the grasper (72) (not piercing it) and then stapling it with the jaws (66). There is also no teaching of repositioning the pierced tissue. Once the tissue is stapled (i.e., pierced) by the jaws (66), no further manipulation of the stapled tissue is taught or suggested. For all of these reasons, Harrison cannot anticipate claim 48, and claim 48 as well as claims 49-52 which depend therefrom, distinguish over Harrison and represent allowable subject matter.



Claim 53

Independent claim 53 recites a method that includes piercing stomach tissue with a piercing member from within the stomach, engaging the pierced stomach tissue with a plurality of members, and moving at least one of the plurality of members to place exterior surface regions of the stomach in apposition. As noted above, Harrison simply teaches grasping stomach tissue with a grasper (72) and stapling the grasped tissue with jaws (66). There is no teaching or suggestion of piercing stomach tissue and engaging the pierced stomach tissue with a plurality of members. After stapling the tissue (i.e., piercing the tissue), Harrison does not teach or suggest doing anything further with the stapled tissue, much less engaging the tissue that was stapled. Harrison fails to teach or suggest the method of claim 53 and thus cannot anticipate claim 53. Accordingly, claim 53 as well as claims 54-60 distinguish over Harrison and represent allowable subject matter.

Claim 61

Independent claim 61 recites a method that includes piercing stomach tissue with a piercing member from within the stomach, engaging the pierced stomach tissue with at least one of a plurality of members, and fixing exterior surface regions of the stomach to each other. As noted above, Harrison simply teaches grasping stomach tissue with a grasper (72) and stapling the grasped tissue with jaws (66). There is no teaching or suggestion of piercing stomach tissue and engaging the pierced stomach tissue with at least one of a plurality of members. After stapling the tissue (i.e., piercing the tissue), Harrison does not teach or suggest doing anything further with the stapled tissue, much less engaging the tissue that was stapled or fixing exterior surface regions of the stomach to each other. Harrison thus fails to teach or suggest the method of claim 61 and cannot anticipate claim 61. Accordingly, claim 61 as well as claims 62 and 64-68 distinguish over Harrison and represent allowable subject matter.

**Conclusion**

In view of the above remarks, Applicants submit that all claims are in condition for allowance, and allowance thereof is respectfully requested.

Respectfully submitted,

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